



The National Center for
Academic Transformation

Experts in improving learning and
reducing cost in higher education.

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Written monthly by Bob Heterick and Carol Twigg, *The Learning MarketSpace* provides leading-edge assessment of and future-oriented thinking about issues and developments concerning the nexus of higher education and information technology.

THE NAPSTER PHENOMENA

By now, everyone has probably heard of Napster, the Internet service that connects people who want to listen to music with people who have a digitized version of the music that they are willing to share. Sounds simple and sounds like one of those things that the Internet was just destined to do—sort of like connecting people who want to buy a car with people who want to sell cars, or perhaps a better analogy, connecting people who want information with people who are willing to share it—for free.

No doubt about it, MP3 files are bandwidth hogs. We have seen a number of universities raise the Internet equivalent of a white flag by shutting off access to Napster. The interesting part of the Napster phenomenon is not the bandwidth that is consumed in the exchange but rather the intellectual property rights questions. If you have been following the story in the press, you know that the rock group, Metallica (and also Dr. Dre) has filed suit against Napster. One of the short-term consequences has been Napster's decision to block access to its service to over 300,000 of its subscribers who have been identified as exchanging Metallica music. Napster's argument that it is a "mere conduit" for pirated music was rejected by U.S. District Court Judge Marilyn Patel. The Recording Industry Association of America, which is pursuing the legal challenge on behalf of the recording artists, stands to win tens of billions of dollars in a copyright infringement suit.

Notwithstanding the merits of this particular case, Pandora's box is already open. The future certainly holds the prospect of similar problems with motion pictures, novels and any other sort of intellectual property that can be inexpensively digitized in near perfect quality. In fact, there are a number of businesses serving the academic world that do just that—make near perfect copies of (in these cases, of out-of-copyright) material and make them available to scholars on the Net. Once a format standard is settled upon, something that the nature of the Net generally forces to happen quickly, it is never long before a new set of intermediaries spring up to facilitate exchange. Browsers for HTML files or Napster for MP3 files—it is all the same and very predictable.

Interesting questions arise as to whether these new intermediaries may be the cause of the unintended consequence of stimulating the market, thereby increasing the sales of the original work beyond that which would have occurred absent their market stimulation. One study indicates that, at least in the case of the music phenomena, people using the exchange service would be willing to pay a monthly subscription fee. If this were the case with Napster, the revenue from subscriptions would be in the hundreds of millions of dollars annually. In spite of the Napster flap, at least one company, EMI, has decided to offer digital downloads of some of their music inventory.

What are we to make of this phenomenon? Clearly, millions of citizens are knowingly misappropriating intellectual property—to their advantage and potentially to the disadvantage of the individuals with rights to the intellectual property. Equally clearly, it is the nature of the Net to create situations rife with the prospect for the misappropriation of intellectual property. The sheer number of scofflaws will overwhelm any attempt to police the problem—much as if nearly everyone in town decided to ignore traffic signals. Legal action against individual scofflaws is simply untenable for the legal system. Suits against the deeper pockets of Internet Service Providers will likely (and correctly) fail over the common carriage issue. The Internet is a distributed system with most of the intelligence located on the distributed nodes, so it will be difficult to find other deep pockets to attach to legal action intended to recover damages.

And, what does all this have to do with higher education, the putative context for these remarks? As the IMS standard gains acceptance for the exchange of learning materials, institutions of higher education will ultimately be confronted with the Napster phenomena. Courseware, the intellectual property of individuals and/or institutions will be similarly available for misappropriation. Those individuals and institutions that see their courseware as a source of revenue are likely to be confronted with the same unhappy set of options as faces Metallica in the Napster case.

The suggestion has been made, only partly facetiously, that Metallica should give away their recorded music and concentrate on generating revenue from their live concerts and ancillary sales of logo-ed memorabilia. Now I wouldn't attempt to suggest to Metallica what they should do, but that idea has a great deal of merit for institutions of higher learning. It is well ingrained in our society that institutions of higher learning vouchsafe the quality of their educational process by their imprimaturs on a degree. It may well turn out in the long run, that

the imprimatur has more economic value than the learning material embedded in the courseware.

--RCH

LAWYERS IN LOVE

One of the things that the Internet seems to be changing is who's in control. The Napster phenomenon is a perfect illustration of this shift.

Last Friday night, MSNBC's Brian Williams devoted a segment of his news program to Napster, most of it consisting of an interview with Metallica's drummer Lars Ulrich. As you now know (thanks to Bob if you didn't know before), Metallica is suing Napster for copyright infringement. As you can imagine, Mr. Ulrich isn't thrilled with what he views as Napster's appropriation of his intellectual property.

Metallica is apparently concerned with protecting their artistic integrity. An essential part of that protection, in Ulrich's view, is controlling when and where their music is played. Ken Krasner, co-founder of Electric Artists, reiterates this point: "People don't really give a s**t what format their music is delivered in, but what's really important is allowing the artist the decision as to whether or not they want to give away a song. That's their decision, not the consumer's."

The consumer's side of the debate was represented by a young Napster user who said, "We're tired of paying \$16 for two songs that we want. Other Napster users pointed out that they are merely sharing already purchased music. Ah—the 21st century struggle—producers versus consumers. Who will win?"

Information technology and the Internet are undermining—that's probably too tame a word—obliterating our established notions about control, and not just in regard to intellectual property. Let's consider a couple of examples, the first in the area of outsourcing and the second concerning distance learning.

Outsourcing is moving into the mainstream of higher education. The common wisdom offered by experienced campus administrators is that the most important consideration in thinking about outsourcing is the ability of the campus to maintain control of the activity. The issue is presented as one of institutional choice: to outsource or not to outsource, to choose one company versus another, to determine the conditions under which the activity occurs, and so on. But what happens when your institution's functions begin to be outsourced and you've had no part of that decision?

Consider the bookstore. Many institutions outsource their bookstores, making contractual arrangements with companies that guarantee the campus a revenue stream. I was recently visiting one of my favorite universities to see and hear about their new campuswide virtual learning environment. One of the faculty members proudly showed me his course Web site. Among the many resources included was a link to his textbook on Amazon.com so that students could order the book from the course Web page. Presto! He'd outsourced the university bookstore, and the institution had nothing to say about it.

SMARTHINKING is an exciting new company that provides high-quality, real-time, on-line academic support for core courses in higher education through chat technology, virtual whiteboards and personalized feedback. Institutions can, of course, contract with SMARTHINKING to provide tutorial services for their students, either supplementing existing campus services or outsourcing them entirely. But SMARTHINKING is also entering into a relationship with a major publisher who plans to offer three hours of free tutorial help (through SMARTHINKING) to students who buy their textbooks. There is little doubt that, in the highly competitive world of collegiate publishing, other companies will soon follow suit. Faculty members will be inclined to adopt those textbooks that supply value-added services. Change! The institution's tutoring function has been outsourced, without a campus decision.

How should institutions react to these developments? Should they, like Metallica, start suing everyone is sight? Should they try to control the behavior of hundreds of faculty members and thousands of students? Or should they recognize that the world is being changed by the Internet and figure out how to take advantage of it?

The phenomenon of distance learning has obliterated the ability of institutions and states to control competition. It has undermined the traditional regulatory framework that provided institutional franchises for designated geographic or programmatic areas. These developments have occurred regardless of the wishes of either individual institutions or higher education systems. When these changes first began to be noticeable, one heard a lot about controlling the competition; today, those voices are silent. Instead, progressive institutions are grappling with this new environment and figuring out how to position themselves effectively within it. They are finding ways to differentiate themselves from their competitors by strengthening service to students. They are, in effect, changing their business models to take account of a new set of circumstances and becoming players in a different kind of game.

State policy makers also have the opportunity to turn what first appears to be a threat into an opportunity as Dewayne Matthews astutely advises. (Note how often the word 'control' appears in his comments.) "The opening of higher education markets to true competition means that state policy can shift away from controlling the behavior of higher education institutions to insuring the effective functioning of the higher education market. It will be less necessary for states to regulate institutions in areas like defining missions, reviewing programs, and approving operating budgets and specific expenditures. It will be more important for states to contribute to the development of effective markets through such mechanisms as informing potential consumers of higher education of opportunities available in the system, disseminating information on student outcomes and other

performance measures, and targeting resources to identified state needs. States will need to accept that they no longer control the higher education market and that public institutions are but one player, albeit a very important one, in the higher education system."

Perhaps Metallica should consider that they will be unable to control the Napster phenomenon—they can sue Napster, they can sue various universities, they can sue Gnutella and all the other companies who replicate the software, they can even try to sue the 335,435 individuals who have allegedly exchanged Metallica songs—but they still may not be able to control it. Why not turn this threat into an opportunity? Why not think about their hit songs as loss leaders that generate new fans or draw people to their concerts? Why not use their considerable clout to put pressure on the record companies to sell music in a form that consumers want? Why not form the Heavy Metal E-Collaborative, break away from the record companies and sell directly to the consumer via the Net?

It's a new world!

--CAT

UPCOMING LEADERSHIP FORUM EVENTS

THE LEARNING MARKETPLACE: NEW RESOURCES FOR TEACHING AND LEARNING

Seminar: Thursday, June 15, 2000, 8:30 am-4:00 pm
Product Demos: Wednesday, June 14, 2000, 4:00-7:00 pm
Location: Sheraton Gateway Suites, Chicago, Illinois

Moderators: Bob Heterick and Carol Twigg

More and more companies are entering the higher education market, providing new and different approaches to supporting your teaching/ learning efforts. This workshop provides a rare opportunity for you to compare and contrast commercial offerings in an impartial environment and to gain an overall understanding of the industry.

- * Learn in one day what would take you many to find out on your own.
- * Identify potential partners for developing new learning environments.
- * Meet your colleagues who are wrestling with the same set of issues.
- * See product demonstrations (optional activity on April 17).

Featuring moderated discussions with:

- * Blackboard Inc.
- * Convene
- * eCollege.com
- * Eduprise
- * WebCT

If you are involved in decisions regarding expenditure of funds for teaching/learning services and products, you can't afford to miss this workshop!

STRATEGIES FOR AN INSTITUTIONAL APPROACH TO E-LEARNING

July 13 - 14, 2000
The Westin St. Francis Hotel, San Francisco, CA
Sponsored by Eduprise.

This invitational seminar will provide Chief Executive and Chief Academic Officers an opportunity to develop a strategy framework for e-Learning that is attuned to institutional resources and goals and open to commercial and nonprofit partnerships as a means to achieve focus and a favorable return on investment. Participants will interact with peers and nationally recognized speakers to discuss assessing organizational readiness to implement an effective e-Learning program; planning, developing, implementing, and evaluating e-instruction; linking IT investments to strategic academic goals; insourcing versus outsourcing; and finding an appropriate balance between a virtual-campus instructional program and virtual enhancements to traditional classroom-based instructional programs.

There is no registration fee to participate in this thought provoking two-day session.

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